IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

RSA.No. 797 of 2004()

AS.54/2002 of V ADDL. DISTRICT COURT, ERNAKULAM
OS.1004/1999 of I ADDL.M.C.,ERNAKULAM

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: APPELLANT/PLAINTIFF:PLAINTIFF

KAUMA PAUL, S/O. PAULOSE,
AGED 39, VENDRAPPALLI, PERUMPILLY P.O.,
MULANTHURUTHY VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU
SRI.K.BALACHANDRAN (MANGALATH)

RESPONDENTS: RESPONDENTS/DEFENDANTS:

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1. SOMAN, S/O. GOPALAKRISHNA PILLAI,
AGED ABOUT 45, CHANDANAKUNNEL HOUSE,
PERUMPILLY P.O., MULANTHURUTHY VILLAGE,
KANAYANNUR TALUK.

2. VALSALA SOMAN, W/O. SOMAN,
AGED ABOUT 40, CHANDANAKUNNEL HOUSE,
PERUMPILLY P.O., MULANTHURUTHY VILLAGE,
KANAYANNUR TALUK.

BY ADV. SRI.K.R.MOHANAN FOR R2
SRI.P.B.ASOKAN FOR R1
SRI.VINU RAJ.R.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 797 OF 2004

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Dated this the 24th day of September, 2007

JUDGMENT

Plaintiff in O.S.1004/1999 on the file of Additional Munsiff Court, Ernakulam is the appellant. Defendants are the respondents. Appellant instituted the suit seeking a decree for realisation of Rs.65,000/- due under Ext.A1 promissory note contending that first respondent borrowed Rs.65,000/- and executed Ext.A1 promissory note on 31.1.1997 agreeing to repay with interest at 24% per annum as and when demanded and he did not pay the amount when demanded. It was contended that along with the promissory note first respondent also issued a cheque drawn in Mulanthuruty branch of State Bank of Travancore where presented for encashment was dishonoured for want of sufficient funds under Ext.A2 and inspite of Ext.A3 notice demanding the amount respondents did not pay the amount and therefore he is entitled

to get a decree. Respondents filed a written statement contending that no amount was borrowed as alleged and no promissory note was executed and appellant is therefore not entitled to the decree sought for. Appellant also filed O.S.1304/1999 a suit for realisation of advance amount paid under Ext.A5 agreement for sale. Both the suits were tried jointly. On the side of the appellant, he was examined as PW1 and first respondent was examined as DW1.

2. Learned Munsiff on the evidence dismissed O.S.1004/1999 and decreed O.S.1304/1999 allowing appellant to realise Rs.75,000/-paid under Ext.A5. Appellant challenged the decree and judgment in O.S.1004/1999 before District Court, Ernakulam in A.S.54/2002. Learned Additional District Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for the appellant was heard.

4. The argument of learned counsel appearing for appellant is that there is no law or rule that a promissory note is to be attested by a witness and though Ext.A1 promissory note was attested by two witnesses, it is not mandatory for the appellant to examine the witnesses and ignoring the principle, courts below dismissed the suit for the failure of appellant to examine the attesting witnesses. It was argued that the evidence of PW1 is more than sufficient to grant a decree and the courts below were not justified in dismissing the suit. It was also argued that when the court disbelieved the evidence of respondents in O.S.1304/1999 and granted a decree accepting the evidence of PW1, respondents case should not have been accepted in O.S.1304/1999 and a decree should have been granted in O.S.1004/1999 also.

5. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal.

6. It is true that there is no law that a

promissory note is to be executed in the presence of witnesses or that it shall be attested by witnesses. But when execution of the promissory note is denied by defendants and the disputed promissory note is seen attested by witnesses, appellant cannot be heard to contend that as there is no rule that a promissory note is to be attested by witnesses, the witnesses are not to be examined. The question is proof of execution of Ext.A1, the disputed promissory note. When Ext.A1 promissory note is seen executed in the presence of two witnesses and its execution is denied, courts below were justified in non-suiting the appellant for non-examination of the attesting witnesses. The position would have been different if respondents have admitted the execution of the promissory note. When execution of promissory note is denied, undoubtedly the burden is on the appellant to prove the execution. Execution can be proved not by the examination of the plaintiff alone but by the examination of witnesses, who

according to appellant, were present at the time of execution of the promissory note. In such circumstance, when the courts below on appreciation of evidence found that the interested testimony of PW1 is insufficient to prove the execution and failure of appellant to examine the attesting witnesses is taken as a ground for non-suiting the appellant it cannot be interfered by reappreciating the evidence . The fact that case of respondents in O.S.1304/1999 was not accepted is not a ground to grant a decree when the very execution of the promissory note was not proved. As there is no substantial question of law involved in the appeal, it is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006